

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
PATTISON SAND COMPANY, LLC Clayton, Iowa	NO. 2012-SL-01

IO: Name: Kyle Pattison, Manager  
Pattison Sand Company, LLC  
701 1<sup>st</sup> Street  
Clayton, IA 52049

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Pattison Sand Company, LLC for the purpose of resolving sovereign land violations which occurred at Pattison Sand Company, LLC's mining operation adjacent to the Mississippi River. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Kelly Poole, SL Coordinator  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319  
Phone: 515-281-8967

**Relating to legal requirements:**

Kelley Myers, Attorney for the DNR  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319  
Phone: 515-281-5634

**Payment to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to Iowa Code section 461A.4 and 571 Iowa Administrative Code chapter 13, which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of those laws; and Iowa Code section 461A.5B and the rules promulgated pursuant thereto, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PATTISON SAND COMPANY, LLC

**III. STATEMENT OF FACTS**

1. Pattison Sand Company, LLC is a corporation organized under the laws of Iowa. The company specializes in mining sand from bluffs adjacent to or near the Mississippi River in Clayton County.

2. On November 22, 2011, the DNR identified an accumulation of a large quantity of sand along the Iowa shoreline in the Mississippi River near UMR 623, which DNR Environmental Specialist Senior Doug Hawker discovered during an investigation in the area. The accumulation was caused by discharge material coming from a failed wastewater wet filter located in a mine owned and operated by Pattison Sand Company, LLC. DNR Fisheries Biologist Scott Gritters contacted Pattison Sand Company, LLC to discuss permits and the need to mitigate impacts to mussels destroyed as a result of the discharge.

3. On November 29, 2011, Pattison Sand Company, LLC issued a letter to DNR acknowledging the discharge and accumulation and estimating the size of the impacted area.

4. On November 29, 2011, employees of the DNR, representatives from Pattison Sand Company, LLC and representatives from the U.S. Army Corps of Engineers (ACOE) and the U.S. Fish and Wildlife Service (FWS) participated in a conference call to discuss permitting requirements, the removal of discharged material and the state-listed threatened and endangered mussel species known to exist in the area. Pattison Sand Company, LLC shared information regarding the affected area, how it may not be as large as first estimated by it, as well as mussel survey information it obtained from its consultant. The DNR agreed to review the information provided by Pattison Sand Company, LLC and to coordinate with the ACOE and the FWS in reviewing any permits. The DNR encouraged Pattison Sand Company, LLC to file an application for a Sovereign Lands Permit on the Joint Application form to facilitate coordination among the parties participating on the call.

5. On November 30, 2011, DNR Fisheries Bureau employees Karen Osterkamp and Kevin Hanson conducted a field review of the area of impact.

6. On December 1, 2011, Pattison Sand Company, LLC submitted an incomplete Joint Application.

7. On December 1, 2011 and again on December 2, 2011, DNR contacted Pattison Sand Company, LLC by email to inform it that the location of the dredge disposal site is required before the DNR could issue a Flood Plains permit. The Flood Plains permit is a prerequisite for the issuance of a Sovereign Lands Permit.

8. On December 2, 2011, Pattison Sand Company, LLC informed the DNR and ACOE via email that the accumulated material could not be removed until spring due to weather. DNR and ACOE responded requesting Pattison Sand Company, LLC continue to seek a viable method for immediate removal of the accumulated material.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PATTISON SAND COMPANY, LLC

9. On December 7, 2011, the DNR informed Pattison Sand Company, LLC by phone that a Notice of Violation to Pattison Sand Company, LLC for the unauthorized accumulation of sediment in water under the jurisdiction of the Natural Resource Commission would be issued.

10. Pattison Sand Company, LLC could not be certain how long the wet filter had malfunctioned. It has developed a plan to relocate the wet filter further within its plant to mitigate any impacts related to possible future malfunctions.

11. On December 9, 2011, representatives from DNR and Pattison Sand Company, LLC participated in a conference call to discuss impending procedures for resolving the Chapter 13 violation.

12. On February 28, 2012, DNR issued a Notice of Violation for the unauthorized accumulation of sediment in water under the jurisdiction of the Natural Resources Commission.

13. Pattison Sand Company, LLC agreed it would obtain a Sovereign Lands Permit and offered to gather additional information as the DNR or other permitting parties reasonably require.

14. Pattison Sand Company, LLC has indicated it is willing to take necessary actions to correct the deficiencies and mitigate detrimental impacts to the area.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 461A.4 prohibits the accumulation of materials resulting in an obstruction on state-owned waters under the jurisdiction of the Natural Resource Commission.

2. 571 IAC 13.4 and 13.15(1) prohibit the alteration of public lands or waters under the jurisdiction of the Natural Resource Commission without a permit issued prior to the commencement of such activities.

3. Iowa Code section 461A.5B and 571 IAC 13.15(2) authorize the DNR to assess a civil penalty of up to \$5,000 per violation against a person who violates Iowa Code section 461A.4. Each day of violation is considered a separate offense.

**V. ORDER**

THEREFORE, it is hereby ordered and Pattison Sand Company, LLC agrees to the following:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PATTISON SAND COMPANY, LLC

1. Pattison Sand Company, LLC shall pay a penalty of \$10,000.00 within 30 days of the date the Director of DNR signs this administrative consent order.

2. Pattison Sand Company, LLC shall submit a complete application for a Sovereign Lands Permit to the DNR for the removal of the accumulated material and restoration of the affected area to the condition that existed before the commencement of the unauthorized activity within 30 days of the date the Director of DNR signs this administrative consent order. The Sovereign Lands Permit shall include, but is not limited to, the following conditions:

a. Pattison Sand Company, LLC shall be responsible to survey the accumulated material to confirm the extent of the impact prior to dredging and provide such results to DNR. The survey shall be sufficient to determine the extent of the downstream impact. If the survey indicates a downstream movement of the accumulated material, Pattison Sand Company, LLC may be held responsible for mitigating additional impacts to the resource.

b. Pattison Sand Company, LLC shall be required to remove the materials in a manner to avoid and minimize additional impacts to the resource as specified in the permit conditions.

c. Pattison Sand Company, LLC shall remove the accumulated material and restore the affected area to the condition that existed before the commencement of the unauthorized activity no later than 90 days from permit's issuance unless a different date can be agreed upon by the DNR and Pattison Sand Company, LLC.

d. Pattison Sand Company, LLC shall install a silt fence at the ordinary high water elevation below the discharge pipe by 10 days of the date the Director of DNR signs this administrative consent order. To verify that no additional materials are entering the river at this location, the silt fence shall be visually inspected and photographed by Pattison Sand Company, LLC, or its representative, weekly until the wet filter malfunction is fixed at which time the inspection shall occur monthly for a period of six months. Immediately following each inspection, the photograph shall be provided to the DNR Fisheries Biologist in charge of the area, to be named in the permit.

**VI. PENALTY**

Iowa Code section 461A.5B authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. The accumulation of materials occurred over a substantial period of time, meaning DNR could have assessed a larger fine. DNR was able to document the loss of approximately 6,600 square feet of mussel habitat on the riverbed near the accumulated materials due to those discharged materials. The penalty amount was calculated by assessing the time over which the violation has occurred and the damage to the biological resources of the area attributable to the

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: PATTISON SAND COMPANY, LLC

violation. The final amount was calculated using the Habitat Equivalency Analysis, used by the FWS.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Pattison Sand Company, LLC. For that reason, Pattison Sand Company, LLC waives the rights to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 461A.5B.

Nothing in this administrative consent order shall waive the rights or obligations of the DNR to enforce violations of other laws not described herein or to enforce violations of the laws cited herein which occur after the date the Director of the DNR signs this administrative consent order.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 1st day of  
April, 2012.

  
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KYLE PATTISON, Manager  
Pattison Sand Company, LLC

Dated this 26 day of  
Nov, 2012.

Kelley Myers; Kelly Poole